

COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Williamson

No. No. 20-3187, Court of Appeals for the Tenth Circuit (May 26, 2021)

SUMMARY

The Tenth Circuit denied a certificate of appealability (COA) in this habeas case, holding that the district court properly rejected the petitioner's Rule 60(b)(4) motion because he received due process during his § 2255 proceedings and could not use Rule 60(b) to raise arguments that should have been brought on direct appeal. The court also held that the petitioner's challenge to the district judge's appointment was procedurally barred as an unauthorized second or successive § 2255 claim. Key topics include COA standards under 28 U.S.C. § 2253(c)(2), the distinction between true Rule 60(b) motions and successive habeas petitions, and the procedural bar on raising new substantive claims via Rule 60(b)(4).

CASE DETAILS

COURT	Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Paul J. Kelly, Jr.; Harris L Hartz; Carolyn B. McHugh
JURISDICTION	Federal
DECIDED	May 26, 2021
DOCKET	No. 20-3187
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from district court's denial of Rule 60(b)(4) motion and motion for reconsideration, and denial of COA.
STANDARD OF REVIEW	A COA requires a substantial showing of the denial of a constitutional right; where claims are denied on the merits, petitioner must show that reasonable jurists would find the district court's assessment debatable or wrong; where claims are denied on procedural grounds, petitioner must also show that reasonable jurists would find the procedural ruling debatable.
PRECEDENTIAL VALUE	unpublished
PARTIES	Brett J. Williamson v. United States of America

TOPICS

habeas corpus

criminal procedure

civil procedure

appellate procedure

due process

PRACTICE AREAS

Criminal Law

Habeas Corpus

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in denying Williamson's Rule 60(b)(4) motion for relief from judgment on his § 2255 motion.
2. Whether the district court erred in denying Williamson's motion for reconsideration of the denial of his Rule 60(b)(4) motion.
3. Whether Williamson is entitled to a certificate of appealability to challenge these denials.
4. Whether Williamson is entitled to records relating to the appointment of the district judge who presided over his trial.

HOLDINGS

1. The district court's conclusions are not reasonably debatable; Williamson has not made a substantial showing of the denial of a constitutional right. The district court properly considered and rejected his due process claims, and Rule 60(b)(4) cannot be used to raise arguments that should have been raised on direct appeal.

KEY QUOTATIONS

"To obtain a COA from this court, Mr. Williamson must make 'a substantial showing of the denial of a constitutional right.' 28 U.S.C. § 2253(c)(2)." (at 4)

"Where a claim has been denied on the merits, the petitioner must demonstrate that reasonable jurists 'would find the district court's assessment of the constitutional claims debatable or wrong.' Slack v. McDaniel, 529 U.S. 473, 484 (2000)." (at 4)

"Where a claim has been denied on procedural grounds, the petitioner must also demonstrate that reasonable jurists 'would find it debatable whether the district court was correct in its procedural ruling.' Id." (at 4)

"Neither of the district court's conclusions are reasonably debatable." (at 4)

"Mr. Williamson's Rule 60(b)(4) motion and motion for reconsideration therefore do not state a valid claim for denial of due process on his § 2255 claims. See Spitznas, 464 F.3d at 1225." (at 5)

"As a procedural matter, it is not reasonably debatable that Rule 60(b)(4) does not permit parties to raise arguments that should have been raised on direct appeal. See Espinosa, 559 U.S. at 270; Johnson v. Spencer, 950 F.3d 680, 698–99 (10th Cir. 2020)." (at 5)

FACTUAL BACKGROUND

Williamson was convicted by a jury of six counts related to attempting to employ, use, persuade, entice, or coerce a minor to engage in sexually explicit conduct for transmission in interstate commerce, and using a

facility of interstate commerce to attempt to persuade a minor to engage in sexual activity. He received a life sentence. After his convictions were affirmed on direct appeal, he filed a § 2255 motion, which was denied. He then filed a series of post-judgment motions.

PROCEDURAL HISTORY

Williamson was convicted in 2014 on multiple counts related to child sexual exploitation, sentenced to life, and his conviction was affirmed on direct appeal. He filed a § 2255 motion in 2019, which was denied. He then filed a Rule 60(b)(4) motion and a motion for reconsideration, both denied by the district court. The district court also denied a COA. Williamson appealed and sought a COA from the Tenth Circuit.

DISPOSITION

dismissed

CASES CITED

- United States v. Williamson, 859 F.3d 843 (10th Cir. 2017), cert. denied 138 S. Ct. 1324 (2018)
- United States v. Williamson, 2019 WL 4601560 (D. Kan. Sept. 23, 2019)
- United States v. Williamson, No. 13-20011-01-KHV, 2020 WL 4192310 (D. Kan. July 21, 2020)
- United States v. Williamson, No. 13-20011-KHV, 2020 WL 4596865 (D. Kan. Aug. 11, 2020)
- United States v. Williamson, No. 13-20011-01-KHV, 2020 WL 5593841 (D. Kan. Sept. 18, 2020)
- United States v. Williamson, No. 13-20011-01-KHV, 2020 WL 1433492 (D. Kan. Mar. 24, 2020)
- Spitznas v. Boone, 464 F.3d 1213 (10th Cir. 2006)
- United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010)
- United States v. Baker, 718 F.3d 1204 (10th Cir. 2013)
- United States v. Springer, 875 F.3d 968 (10th Cir. 2017)
- Slack v. McDaniel, 529 U.S. 473 (2000)
- Johnson v. Spencer, 950 F.3d 680 (10th Cir. 2020)

OPINION

PER CURIAM.

FILED United States Court of Appeals UNITED STATES COURT OF APPEALS Tenth Circuit
FOR THE TENTH CIRCUIT May 26, 2021 _____ Christopher
M. Wolpert Clerk of Court UNITED STATES OF AMERICA, Plaintiff - Appellee, v. No. 20-3187
(D.C. Nos. 2:18-CV-02667-KHV & BRETT J. WILLIAMSON, 2:13-CR-20011-KHV-1) (D.
Kan.) Defendant - Appellant. _____ ORDER DENYING
CERTIFICATE OF APPEALABILITY* _____ Before
HARTZ, KELLY, and McHUGH, Circuit Judges. _____
Petitioner-Appellant Brett Williamson, a federal inmate appearing pro se, seeks a Certificate of

Appealability (COA) to appeal the district court's denial of his motion for relief from judgment under Fed.

R. Civ. P. 60(b)(4) and his motion for reconsideration of that denial. He also seeks records relating to the appointment of the district court judge that presided over his trial on the basis that such records are necessary to demonstrate that the district court lacked jurisdiction over his trial.

On June 11, 2014, a jury convicted Mr. Williamson of three counts of attempting to employ, use, persuade, entice or coerce a minor to engage in sexually explicit conduct * This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed.

R. App. P. 32.1 and 10th Cir. R. 32.1. for the purpose of transmitting a live visual depiction of such conduct, and transmitting the visual depiction in interstate commerce, in violation of 18 U.S.C. § 2251(a); and three counts of using a facility of interstate commerce to attempt to persuade, induce, entice, or coerce an individual under the age of 18 to engage in sexual activity for which a person could be charged with a criminal offense, in violation of 18 U.S.C. § 2422(b).

On May 28, 2015, Mr. Williamson received a life sentence. His convictions were affirmed on direct appeal. *United States v. Williamson*, 859 F.3d 843 (10th Cir. 2017), cert. denied 138 S. Ct. 1324 (2018). In September 2019, Mr. Williamson filed a motion to vacate his sentence under 28 U.S.C. § 2255.

The district court overruled the motion. *United States v. Williamson*, 2019 WL 4601560 (D. Kan. Sept. 23, 2019). Since then, Mr. Williamson has filed a series of motions seeking reconsideration of the district court's denial of his § 2255 motion.

The subject of this appeal is the district court's denial of his Rule 60(b)(4) motion for relief from the district court's judgment denying his § 2255 motion, *United States v. Williamson*, No. 13-20011-01-KHV, 2020 WL 4192310 (D. Kan. July 21, 2020), and the district court's denial of his motion to reconsider his Rule 60(b)(4) motion, *United States v. Williamson*, No. 13-20011-KHV, 2020 WL 4596865 (D.

Kan. Aug. 11, 2020). Mr. Williamson's Rule 60(b)(4) motion and motion for reconsideration raised a variety of due process claims in arguing that the district court's judgment on his § 2255 petition was void. Construing Mr. Williamson's pro se motions liberally, the district court denied the motions on two grounds.

First, it concluded that, to the extent Mr. 2 Williamson claimed he was denied due process because the district court failed to address all of the claims raised in his original § 2255 petition, his claim should be treated as a "true" Rule 60(b) motion, rather than a second or successive habeas

petition.¹ Williamson, 2020 WL 4192310 at *2; see also *Spitznas v. Boone*, 464 F.3d 1213, 1225 (10th Cir.

2006). Nevertheless, the district court explained that it had specifically addressed Mr. Williamson's argument that the original order did not rule on all his claims and arguments in an earlier order, and that Mr. Williamson had received notice and an opportunity to be heard "through multiple memoranda in support of his Section 2255 motion." Williamson, 2020 WL 4192310, at *2.

It therefore concluded that Mr. Williamson was not entitled to relief under Rule 60(b)(4) because he received due process throughout the habeas proceeding. *Id.*; see also *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270–71 (2010).

As to Mr. Williamson's substantive arguments, the district court concluded that Mr. Williamson was not entitled to relief as a procedural matter, because he could not use Rule 60(b)(4) as a substitute for raising arguments that should have been raised on direct appeal. Williamson, 2020 WL 4192310, at *2.

On a subsequent limited remand from 1 Consistent with the district court's interpretation, the motions at issue primarily assert that Mr. Williamson was denied due process based on the district court's misapprehension of the arguments raised in his § 2255 petition.

However, to the extent Mr. Williamson's motion can also be interpreted to assert grounds for relief from his conviction not raised in the original § 2255 petition, his motion seeks "§ 2255 relief in substance, if not in form." *United States v. Baker*, 718 F.3d 1204, 1205–06 (10th Cir. 2013).

Because Mr. Williamson has not received authorization from this court to file a second or successive § 2255 motion, that aspect of the motion would be procedurally barred. *United States v. Springer*, 875 F.3d 968, 982–83 (10th Cir. 2017).³ this court, the district court denied Mr. Williamson a COA on these orders. *United States v. Williamson*, No. 13-20011-01-KHV, 2020 WL 5593841 (D.

Kan. Sept. 18, 2020). To obtain a COA from this court, Mr. Williamson must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a claim has been denied on the merits, the petitioner must demonstrate that reasonable jurists "would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Where a claim has been denied on procedural grounds, the petitioner must also demonstrate that reasonable jurists "would find it debatable whether the district court was correct in its procedural ruling." *Id.* Neither of the district court's conclusions are reasonably debatable.

The district court, on more than one occasion, considered and rejected Mr. Williamson's argument that it misapprehended or failed to address all the claims raised in his § 2255 petition. See generally *United States v. Williamson*, No. 13-20011-01-KHV, 2020 WL 1433492 (D. Kan. Mar. 24, 2020); *Williamson*, 2020 WL 4192310, at *2.

In doing so, the district court reiterated its determinations on the arguments raised in Mr. Williamson's original § 2255 petition. Mr. Williamson's Rule 60(b)(4) motion and motion for reconsideration therefore do not state a valid claim for denial of due process on his § 2255 claims. See *Spitznas*, 464 F.3d at 1225.

Moreover, Mr. Williamson's substantive arguments involve claims that could have been raised on direct appeal. As a procedural matter, it is not reasonably debatable that Rule 60(b)(4) does not permit parties to raise arguments that 4 should have been raised on direct appeal. See *Espinosa*, 559 U.S. at 270; *Johnson v. Spencer*, 950 F.3d 680, 698–99 (10th Cir. 2020).

Contending that they are necessary to demonstrate that his conviction is void for lack of jurisdiction, Mr. Williamson also seeks records relating to the appointment of the district judge that sat by designation in the District of Kansas to preside over his trial. Mr. Williamson did not argue in his original § 2255 petition that his conviction was void due to a defect in the district court's appointment to preside over his trial and he has not received authorization from this court to pursue that argument in a second or successive § 2255 petition.

Mr. Williamson is therefore procedurally barred from pursuing this claim. See *Springer*, 875 F.3d at 982. His motion for records is denied on that basis. We DENY a COA, DENY the motion for records, and DISMISS the appeal. Entered for the Court Paul J. Kelly, Jr. Circuit Judge 5